

Copy for Perciasepe

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Ms. Gina McCarthy
Administrator, U.S. EPA
1200 Pennsylvania Ave., N.W.
Washington, D. C. 20004

OFFICE OF THE
EXECUTIVE SECRETARY

Dear Administrator McCarthy:

I am writing to you to ask you to stop one of the greatest scientific travesties I have witnessed in my 40 years of federal service and private sector consulting. I am talking about EPA's draft Bristol Bay Watershed Assessments (BBWA). I am not interested in the politics of whether or not you have the authority to preempt anything or your hassle with Congress. I am asking you to stop EPA from perpetuating the outright lie to the American public that the document you agency has produced, twice now, is based on the best available science. This assertion by EPA is demonstrably false.

In the interest of full disclosure, I will tell you that I am a senior fisheries consultant to the Pebble Limited Partnership (PLP), but I have not reviewed or provided comments on either draft of the BBWA for them and they have not asked me to contact you. I have provided comments on these documents for another client. Also, in the interest of full disclosure, I am not anti-EPA. During my career in federal service, I have personally been responsible (in collaboration with former Region 9 Deputy Regional Administrator John Wise) for the initiation of over \$250 million in enforcement actions.

I have carefully reviewed both drafts of the BBWA and found the fisheries related sections of these documents to be "utter garbage". EPA's assertion that the fisheries information is current and based on the best information available is pure fiction. I personally know and can demonstrate that these assertions are not true. Several examples will illustrate my point:

- The authors of the 1st draft BBWA did not use publically available, site-specific fisheries information that was both available and known to EPA staff. Examples include: 1) the 2005 Northern Dynasty Minerals progress report on fisheries studies which included sampling locations, fish catch and distribution data, and fish density plots; 2) the Environmental Baseline Document (EBD) released by the Pebble Limited Partnership in late 2011 which contains site-specific and very detailed information on fish distribution, relative abundance, and fish densities; 3) fish distribution, relative abundance, and fish density information from the Alaska Department of Fish and Game (ADFG) and J.W. Buell and Associates (latter data collected on behalf of Cominco, the lease holder in the early 1990s) which are both publically available and on ADFG's Freshwater Fish Inventory website; 4) data from fish collection permits issued by ADFG to private consultants which is public and available on the website; 5) data and information presented at the annual agency meetings which included summary information and in the case of adult salmon population spawning escapement estimates; and finally and most frustrating 6) information and data presented by me at a June 12, 2008 Fish Technical Work Group meeting in Anchorage which included an overview of all the studies conducted near the Pebble deposit including specific information on fish distribution and relative abundance. At this meeting, I also had a notebook with hundreds of pages of specific fish distribution and catch data that had been submitted to ADFG as part of their collection permit requirements for the years 2004-2007. I offered a copy of this notebook to anyone in the room, including opponents of the Pebble project. What is most frustrating is that Phil North, EPA staff in Region 10 and one of the authors of the BBWA documents, was sitting next to me during the multi-hour briefing. No one asked for a

copy of this data and none of this data was used by EPA, while the BBWA claims that such data and information was not available. Statements in the BBWA, that such detailed information was not available, is patently false and represents professional misconduct and outright scientific fraud by EPA.

- The comments and examples presented immediately above were submitted during the first comment period, but EPA failed to incorporate any of this information in the second draft, including the “ecological assessments in Appendices A and B, thus continuing the scientific misconduct and fraud and again had a fatally flawed foundation on which to base their speculations regarding impacts of a hypothetical development.
- Despite statements to the contrary in the BBWA, the authors of the documents did not follow EPA’s own guidelines with respect to the preparation of Ecological Risk Assessments (ERA). These guidelines provide a very detailed process on determining which data and information and the quality of that information may be included in an ERA. There are probably more than a hundred examples of where EPA chose to make assumptions, assertions, lack of data comments, and conclusions that are in direct violation of your own ERA Guidelines and as a result produced a document that is scientifically bankrupt.
- EPA failed to meet its own guidelines with respect to dissemination of information to the public. The two BBWA drafts are without a doubt not scientifically credible and have deliberately eliminated the use of data that would have provided the American public with a better understanding of the fishery resources that exist in that part of Alaska. As a result of these omissions and your failure to follow your own ERA guidelines, your agency has produced two documents that are scientifically deficient, resulting in fatally flawed conclusions and provide false information to the American public. This is a disgrace for an agency that is supposed to be a bastion of scientific integrity. Your actions to date have brought self-inflicted shame on the entire federal scientific community.

It is clear from my long career (including nine years as Chief, Fisheries Division, Alaska Region, U.S. Fish and Wildlife Service), that you have one or more major problems associated with the development and revision of the BBWA. These problems could include:

1. A Region 10 Administrator who has a political agenda and is ignoring the science or who lacks the technical knowledge to understand that his staff and the authors of the BBWA are either incompetent or are also forcing a political agenda.
2. A technical staff and hired consultants who are not professionally or technically qualified to write an ERA and certainly did not accumulate the publically available fish data prior to writing the BBWA and/or managers and/or supervisors who do not understand or did not follow your agency’s ERA guidelines and guidelines for dissemination of information to the public.
3. EPA did not adequately review the public comments submitted on the 1st draft of the BBWA or chose to ignore them. I can only guess, but my conclusion is the latter, since the foundational assessment documents for fish (Appendix A anadromous fish and Appendix B resident fish) did not change from one draft to another. Also, only a limited amount of information from the EBD was incorporated into the second draft BBWA and virtually none of the information incorporated was used to determine the “ecological setting” or the ecological risk associated with the development scenarios hypothesized by EPA. It’s almost like EPA just put their head down and decided to push on through.

I just don't want to throw rocks (no matter how deserved they are) at EPA. I want you to stop this BBWA process and conduct a hard, critical review of the "science" behind your BBWA and fix the problems for the good of your agency and other federal scientific agency likewise. If you continue on your current path you will bring disgrace and shame to an agency that should be about good science.

I have two potential solutions to offer you. First, I offer to brief you or Deputy Administrator Perciasepe on the problems with the fishery resource data in the BBWA. I am not interested in briefing the Region 10 Administrator, since he may well be the source of the problems and is so heavily invested in the ridiculous path the EPA has chosen to date. My second option is for you to ask two former EPA employees (both recently retired), whom I have known for years professionally, to receive a briefing from me on the fishery resource science problems. These folks could then provide you an unbiased report on the scientific flaws in your BBWA. Your peer review process was inadequate to provide the reviewers with sufficient background in order to adequately do a credible review. These two individuals are:

1. Don Martin, retired EPA Region 10 staff from Boise, ID who is currently residing in Couer d'Alene, Idaho and
2. Dr. Robert Lackey, former Deputy Director of EPA's Ecology Division Laboratory in Corvallis, OR, who is still active in the area.

I have not talked to either of these individuals, but am hopeful that they would agree to such an effort. They would have to have read the BBWA drafts and should be familiar with the EBD Chapter 15 on fish resources distributed by the Pebble Partnership in 2011.

I believe this is the only way to get EPA's attention on this critical science issue. I respectfully request a response within 15 working days. If I do not receive a response, then I shall initiate a formal waste, fraud, and abuse process through the Inspector General's office. Just remember that is about good science and the scientific credibility of EPA, not politics. The ball is in your court.

Sincerely,



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